

No.

8832

Vol
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In the United States
Circuit Court of Appeals
For the Ninth Circuit. /

In the Matter of
C. S. HUTSON & COMPANY,
Bankrupt.

C. S. HUTSON,
Appellant,
vs.

S. J. COFFMAN, Trustee in the matter of
C. S. HUTSON & COMPANY, Bankrupt,
Appellee.

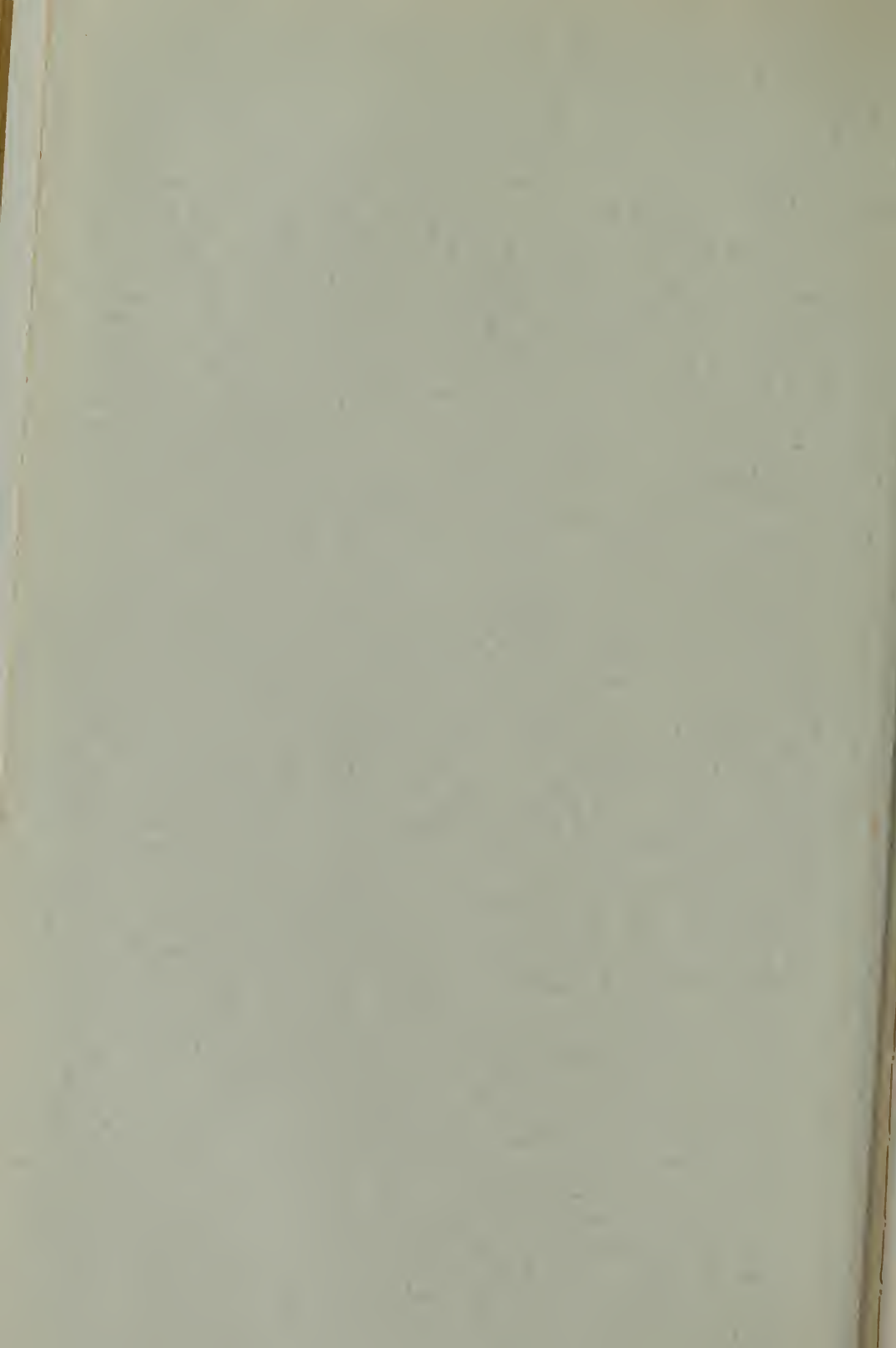
Transcript of Record

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

APR 27 1938

PAUL P. O'BRIEN,
CLERK



No.

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Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of
C. S. HUTSON & COMPANY,
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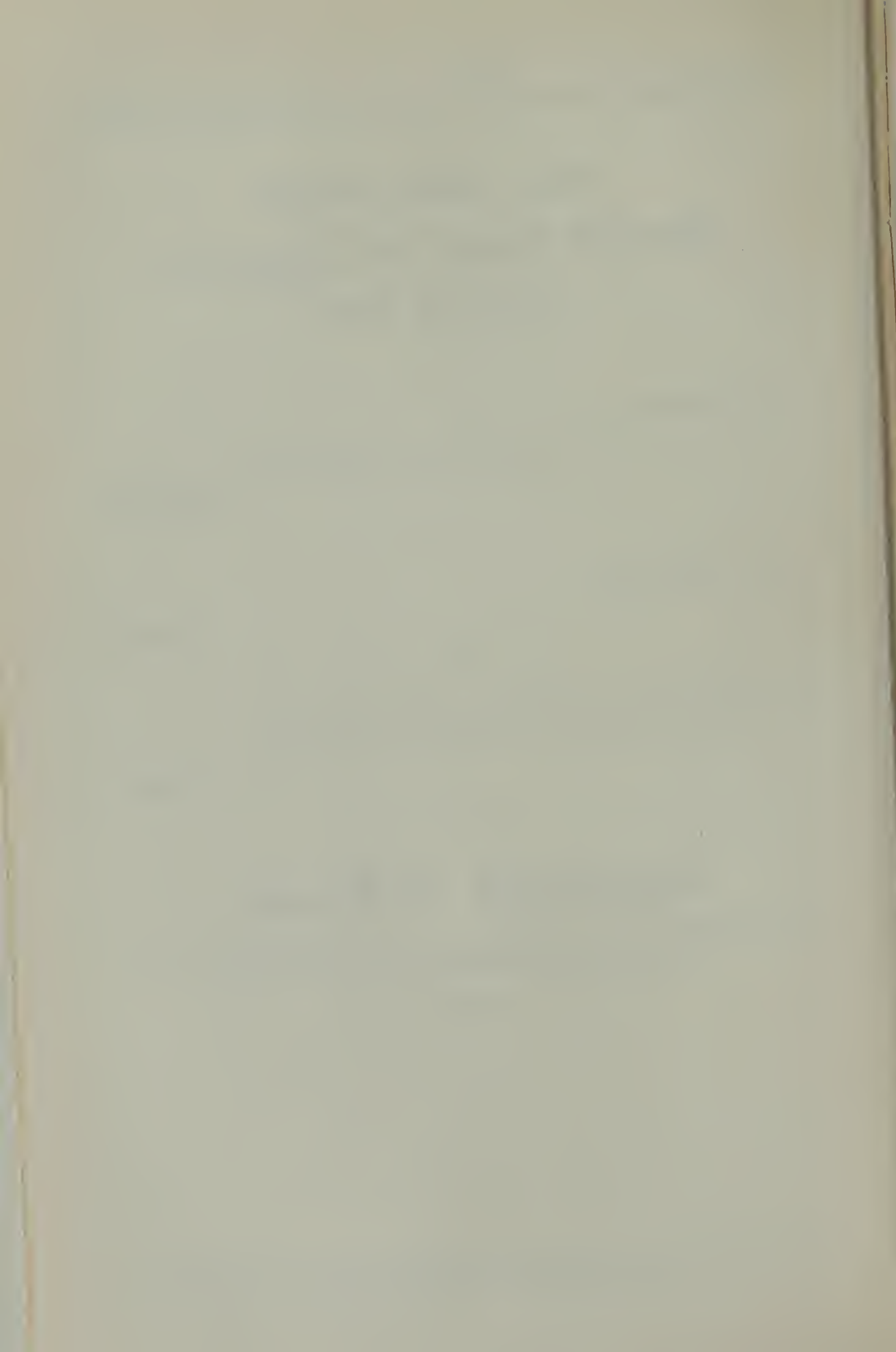
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Solicitors.

For Appellant:

ROBERT B. POWELL, Esq.,
354 South Spring Street,
Los Angeles, California.

For Appellee:

GERALD WILLIS MYERS, Esq.,
307 South Hill Street,
Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA CENTRAL DIVISION

In the Matter of : In Bankruptcy
: No. 23748-C
C. S. HUTSON & COMPANY, :
: CITATION
Bankrupt. : ON APPEAL

UNITED STATES OF AMERICA—SS.

The President of the United States of America to
S. J. COFFMAN, Trustee in the matter of C. S. HUT-
SON & COMPANY, BANKRUPT, GREETING:

You are hereby cited and admonished to be and appear
at a session of the United States Circuit Court of Ap-
peals for the Ninth Circuit to be holden at San Francisco,
California within thirty (30) days from the date hereof,
pursuant to an order allowing an appeal of record in the
office of the Clerk of the above entitled Court wherein
C. S. Hutson is the Appellant, and you are the Appellee,
to show cause, if any there be, why the order made and
entered herein by the above entitled Court on June the
24th, 1937, affirming the order of Hugh L. Dickson,
Referee in Bankruptcy in the above entitled proceedings,

made on April the 13th, 1937, disallowing the general claim of C. S. Hutson filed herein in the sum of \$7400.54, should not be reversed and said claim be allowed.

WITNESS the Honorable GEO. COSGRAVE, United States District Judge for the Southern District of California this 23d day of July, 1937.

Geo Cosgrave
District Judge

[Endorsed]: Received copy of the following papers, Citation on Appeal, Order Allowing Appeal, *Petition* for Appeal, Assignment of Errors, this 23rd day of July, 1937 Gerald Willis Myers Attorney for S. J. Coffman (Trustee) Appellee Filed R. S. Zimmerman, Clerk at 39 Min. past 12 o'clock, Jul. 24, 1937 P. M. By F. Betz, Deputy Clerk.

PROOF OF UNSECURED DEBT
(Form 31)

In the District Court of the United States
Southern District of California
Central Division

_____)	
In the Matter of)	23748-C
C. S. Hutson & Company,)	In 77 B
) Bankrupt)	
_____)	

At Los Angeles, Cal., in said Central District of California, on the 5th day of Dec., A. D., 1934, came C. S. Hutson, of Los Angeles, in the County of Los Angeles, and State of California, in said District of California, and made oath and says:

If Individual Omit These Paragraphs

CORPORATION

That he is treasurer of, a corporation incorporated by and under the laws of the State of, and carrying on business at, County of, State of, and that he is duly authorized to make this Proof of Debt and Attached Letter of Attorney.

PARTNERSHIP

That he is a member of the firm of , a copartnership consisting of himself and, that he executed the subjoined letter of attorney on behalf of said copartnership; and that he is authorized thereto by said copartnership on whose behalf he acts.

That the said C. S. Hutson & Company the corporation whom a petition for 77-B has been filed, was at and before the filing of said petition, and still is, justly

and truly indebted to the said deponent in the sum of Seven Thousand Four Hundred & 54/100 (\$7400.54) Dollars; that the consideration of said debt is as follows:

Services rendered

.....
goods, wares and merchandise sold and delivered within two years last past by the claimant, an itemized bill of which, marked Exhibit "A", is hereto annexed and referred to as a part hereof

.....
that no part of said debt has been paid;

.....
no note has been received for said indebtedness, nor for any part thereof, nor has any judgment been rendered thereon, except as hereinabove stated; that there are no set-offs or counter-claims to the same except a note for \$4126.88

.....
and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

C. H. HUTSON

Creditor

916 No. Edgemont

Subscribed and Sworn to before me this 5 day of Dec., 1934

Victor Ford Collins

[Endorsed]: Filed Dec. 5, 1934 at 10 o'clock A. M. Earl E. Moss, Referee Phyllis Gray Clerk. Filed R. S. Zimmerman, Clerk at 4 min. past 4 o'clock Apr. 20, 1937 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NOTICE OF OBJECTION TO ALLOWANCE
OF CLAIM.

To C. S. Hutson and to his Attorney, Robert B. Powell, YOU, AND EACH OF YOU, will please take notice that S. J. COFFMAN, the Trustee in the above-entitled estate objects to the allowance of your claim heretofore filed in the sum of \$7400.54 upon the following grounds:

1. That the records of said bankrupt are incorrect in that the true records of the bankrupt show that it is not indebted in any sum whatsoever but that you are indebted to the corporation in a sum in excess of \$25,000.00.

2. That your purported claim arises out of fictitious sales of property and corresponding book entries therefor, wherein you attempted to sell to the bankrupt a one-fourth interest in the American Bank Check Company, receiving credit on *you* personal account for \$25,000.00 although having no interest in said company to sell and no evidence thereof ever delivered to the bankrupt.

3. Fictitious entries of salary to H. L. Hutson since 1928, the credit thereof having been applied to your personal account.

DATED: October 20, 1936.

Gerald Willis Myers
Attorney for Trustee

[Endorsed]: Filed Oct. 20, 1936 at 2 o'clock P. M. Hugh L. Dickson, Referee, C. M. Commins Clerk C. M. C. Filed R. S. Zimmerman, Clerk at 4 min. past 4 o'clock Apr. 20, 1937 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ORDER DISALLOWING CLAIM OF
C. S. HUTSON.

The Trustee's objection to the claim of C. S. Hutson came on regularly for hearing April 12, 1937, at Two O'clock, P. M., before Honorable Hugh L. Dickson, Referee in Bankruptcy, and evidence having been introduced in support of and in opposition to the allowance of said claim and said matter having been fully considered by the Referee;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the claim of C. S. Hutson in the sum of \$7400.54 be disallowed and expunged from the list of claims upon the Trustee's record in said matter.

DATED: April 13th, 1937.

Hugh L Dickson
Referee in Bankruptcy.

[Endorsed]: Filed R. S. Zimmerman Clerk at 4 min. past 4 o'clock Apr. 20, 1937 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PETITION TO REVIEW ORDER OF REFEREE
TO THE HONORABLE HUGH L. DICKSON,
REFEREE IN BANKRUPTCY:

Comes now C. S. Hutson and, through his attorney, files this his petition to review the order of Referee Hugh L. Dickson, said ordering disallowing the claim of C. S. Hutson filed in the above entitled matter in the sum of \$7400.59, said order having been signed on April 13, 1937. Said petition for review is based on the following grounds, to-wit:

I.

The Referee erred in disallowing the claim.

II.

The Referee erred in allowing evidence to be introduced in the form of a transcript of proceedings held in San Francisco, said proceedings having not been brought on in the presence of C. S. Hutson or his counsel and with no notice to the said C. S. Hutson.

WHEREFORE, your petitioner prays that said order be reviewed and that an order be made and entered herein by the above entitled Court allowing the said claim of petitioner in the sum of \$7400.59.

Robert B. Powell

Attorney for C. S. Hutson

[Endorsed]: Filed Apr. 14, 1937 at 50 min. past 3 o'clock P. M. Hugh L. Dickson, Referee C. M. Commins, Clerk C. M. C. Filed R. S. Zimmerman, Clerk at 4 min. past 4 o'clock Apr. 20, 1937 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

REFEREE'S CERTIFICATE ON REVIEW.

I, HUGH L. DICKSON, one of the Referees in Bankruptcy, do hereby certify that in the course of the proceedings in the above entitled matter before me the following questions arose pertinent to the said proceedings.

I.

A claim was filed in these proceedings by C. S. Hutson in the sum of \$7400.54.

II.

Objections were filed to the claim by S. J. Coffman, Trustee of the bankrupt estate.

III.

The hearing was had on said objections on Monday, April 12, 1937, at the hour of 2:00 o'clock, P. M. thereof, and evidence was introduced by the said Trustee, at which time an order was made disallowing the claim.

IV.

For the information of the court I hand up herewith the reporter's transcript which is quite brief, and since the petition to review involves the effect of testimony and the admissibility of evidence, I believe that the reviewing court should construe the entire transcript.

V.

For the information of the Court I hand up herewith the following documents:

1. Proof of claim filed by C. S. Hutson
2. Objection to claim filed by S. J. Coffman, Trustee
3. Ordering disallowing claim
4. Petition for review.

DATED this 16th day of April, 1937.

Hugh L. Dickson

Referee in Bankruptcy.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 4 min. past 4 o'clock Apr. 20, 1937 P. M. By M. J. Sommer, Deputy Clerk.

At a stated term, to-wit: The February Term, A. D. 1937, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court room thereof, in the City of Los Angeles on Thursday the 24th day of June in the year of our Lord one thousand nine hundred and thirty-seven.

Present:

The Honorable: GEO. COSGRAVE District Judge.

In the Matter of)	
C. S. HUTSON & CO.,)	No. 23748-C
Bankrupt.)	

The petition for review is denied and findings and order of the referee confirmed.

Exception to petitioner.

[TITLE OF DISTRICT COURT AND CAUSE.]

NOTICE OF MOTION FOR COURT TO RECON-
SIDER PETITION TO REVIEW REFEREE'S
ORDER AND TO SET ASIDE ORDER CON-
FIRMING REFEREE'S ORDER

TO S. J. COFFMAN AND TO HIS ATTORNEY,
GERALD WILLIS MYERS:

You and each of you will please take notice that C. S. HUTSON will appear before the above entitled Court on Tuesday, July 6, 1937, at the hour of 10:00 a. m. thereof, and petition the Court to review the Referee's ruling denying the claim of C. S. Hutson filed herein, and to reconsider the order of the above entitled Court made on June 24, 1937 affirming the findings of fact and order of the Referee.

DATED: June 30, 1937.

Robert B. Powell

Attorney for C. S. Hutson

[Endorsed]: Received copy of the within this 30 day of June, 1937, E. Crookston for G. W. Myers. Filed R. S. Zimmerman, Clerk at 34 min. past 1 o'clock Jul. 2, 1937 P. M. By M. J. Sommer, Deputy Clerk.

At a stated term, to-wit: The February Term, A. D. 1937, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday, the Sixth day of July, in the year of our Lord one thousand nine hundred and thirty-seven.

Present:

The Honorable: GEO. COSGRAVE District Judge.

In the Matter of)	
)	
C. S. Hutson & Co.,)	No. 23748-C Bkcy
)	
Bankrupt.)	

This matter coming on for hearing on petition of C. S. Hutson to review the Referee's ruling denying the claim of C. S. Hutson herein, and to reconsider the order of the court made on June 24, 1937, affirming the findings of fact and order of the referee pursuant to notice of motion filed July 2, 1937; Robert B. Powell, Esq., appearing for C. S. Hutson, argues; Attorney G. W. Myers argues; the Court makes a statement; Attorney Powell argues further; the Court now orders that said Petition be denied, and exception allowed.

[TITLE OF DISTRICT COURT AND CAUSE.]

STIPULATION

IT IS HEREBY STIPULATED by and between Appellant and Appellee in the above entitled matter that the Transcript which is a part of the Statement of Evidence ordered by the Honorable George Cosgrave, United States District Judge, was prepared as follows:

That S. J. Coffman, Trustee for C. S. Hutson & Company, a corporation, Bankrupt, petitioned the District Court for an order authorizing the institution of ancillary proceedings in San Francisco. That pursuant to the order of the said District Court proceedings were had before Burton J. Wyman, as Special Master. That the evidence is correctly transcribed in the Statement of Evidence which is a part of the Record of these proceedings.

Dated this 13 day of April, 1938.

Robert B. Powell

Attorney for Appellant

Gerald Willis Myers

Attorney for Appellee

[Endorsed]: Filed Apr. 13, 1938 at 55 min. past 4 o'clock P. M. R. S. Zimmerman, Clerk M. J. Sommer, Deputy.

[A STATEMENT OF EVIDENCE]

[TITLE OF DISTRICT COURT AND CAUSE.]

ORDER ON STATEMENT OF EVIDENCE

C. S. Hutson, the appellant in the above entitled matter, having prepared his statement of evidence, and objections to said statement of evidence having been duly prepared and filed by the appellee, S. J. Coffman, and a hearing having duly come on before the undersigned on Monday, March 28, 1938, at the hour of 10:00 a. m. thereof, and it appearing to the Court that all of the testimony introduced in the hearings herein before the referee in bankruptcy is pertinent to the proceedings, and it further appearing that it should be reproduced in the exact words of the witnesses,

IT IS HEREBY ORDERED that an exact copy of the Reporter's Transcript taken of Hearing on Objection to Claim of C. S. Hutson on April 12, 1937, be filed as a statement of evidence in this proceeding.

And it further appearing that there was introduced at the said proceedings a Reporter's Transcript of the testimony of H. L. Hutson taken before Burton J. Wyman, Special Master in Bankruptcy in the Matter of C. S. Hutson, Bankrupt, No. 23748, at San Francisco, California, on Thursday, September 17, 1936; and it appearing that it is necessary for a complete understanding of the matter that said Reporter's Transcript be reproduced in the exact words of the witnesses,

IT IS HEREBY ORDERED that the Statement of Evidence be and it hereby is settled, and that said Statement of Evidence include the following documents:

1. Entire Reporter's Transcript of Hearing on Objection to Claim of C. S. Hutson on April 12, 1937.

2. Reporter's Transcript of the testimony of H. L. Hutson taken before Burton J. Wyman, Special Master in Bankruptcy in the Matter of C. S. Hutson, Bankrupt, No. 23748, at San Francisco, California, on Thursday, September 17, 1936.

DATED this 7th day of April, 1938.

Geo Cosgrave

U. S. District Judge

[Endorsed]: Filed R. S. Zimmerman, Clerk at 34 min. past 2 o'clock Apr. 7, 1938 P. M. By M. J. Sommer, Deputy Clerk.

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

—o0o—

BEFORE: HONORABLE BURTON J. WYMAN, REFEREE IN BANKRUPTCY, SPECIAL MASTER

.....

In the Matter of

C. S. HUTSON

No. 23748

Bankrupt

.....

THURSDAY, SEPTEMBER 17, 1936

APPEARANCES:

Gerald W. Myers, Esq., Attorney for S. J. Coffman, Trustee;

Messrs. John L. McNab and S. C. Wright, Attorneys for C. S. Hutson and American Bank Check Co.

THE MASTER: This is a hearing in the matter of C. S. Hutson.

MR. MYERS: If your Honor please, Mr. Wright and I and Mr. Coffman, Trustee, and Mr. Hutson went over to the plant this morning and checked over the records. And, rather than stipulate what the records disclosed, we asked Mr. Hutson to be here to merely make a statement as to our investigation. Mr. Hutson is here.

(Testimony of Harman L. Hutson)

THE MASTER: Very well, Mr. Hutson will take the stand.

HARMAN L. HUTSON

Called for the Trustee SWORN

THE MASTER: Your full name is what,

A Harman L. Hutson. H-a-r-m-a-n.

MR. MYERS: Q Mr. Hutson, you are the father of C. S. Hutson?

A Yes, sir.

Q And during the year of 1928 up to approximately the month of April you were employed by C. S. Hutson Company in Los Angeles?

A Yes.

Q In 1928, in April, you moved to San Francisco?

A In August.

Q In August, 1928. And you operated what is known in San Francisco as the American Bank Check Co.?

A Yes.

Q That company, at the inception, was a partnership between yourself and C. S. Hutson?

A I think not until after I come up here. C. S. was operating it himself in San Francisco.

Q In San Francisco. And then you came up in August, 1928; then after you came up it was operated as a co-partnership?

A Yes, sir.

Q Until what time? A. Well, some time in 1931.

Q And then in 1931 the partnership was dissolved, in order to settle certain financial obligations between yourself and your son, whereby you were to get all his interest in the American Bank Check Co. in cancellation

(Testimony of Harman L. Hutson)

of certain money which you had loaned or advanced to him, is that correct?

A Correct.

Q And since 1931 you have operated all this business as your own? A. I have.

Q Not as a co-partnership? A No.

Q It has been owned and controlled exclusively by yourself?

A Yes.

Q No other partner in it? A No.

Q It has been operated as a fictitious name?

A Yes.

Q In 1928, after you left C. S. Hutson Company and came up to San Francisco, you operated the American Bank Check Co. and you did not draw any salary from C. S. Hutson Company in Los Angeles?

A No.

Q And from August, 1928 up to and including the present time you have never drawn any salary from them?

A I have not.

Q You have received no dividends from C. S. Hutson Company during the same period of time? A. I have not.

Q And you are still a stockholder in C. S. Hutson Company?

A I have got some stock; yes.

Q Approximately 170-odd shares?

A 171 shares. I think it is supposed to be worth \$10 apiece.

Q You are not an officer in that company? A. No.

Q. And you were previously? A. Yes.

Q When did you cease to be an officer?

A When I come up here.

(Testimony of Harman L. Hutson)

Q In August, 1928? A Yes.

Q From that time on, the only connection you have had with the C. S. Hutson Company was as stockholder?

A Yes—well, we have had business relations back and forth.

Q But you are not an officer or a director; you are merely a stockholder? A That's right.

Q When, Mr. Hutson, was the first time that you had any information that the C. S. Hutson Company, on its books, reflected an investment of 25 per cent interest in the American Bank Check Co.?

A That I couldn't tell. The information was brought to me but I don't remember what was the date.

Q Was it a year or more than a year ago?

A It was more than that. I expect it was two years ago, about.

Q And did you have any information or knowledge at the time the matter was set up on the books as to this 25 per cent interest?

A I didn't know anything about it until some time later. The information came, I think, through my son.

Q After it was all done. And did you ever maintain that a 25 per cent interest, or was it ever your conception that a 25 per cent interest in the American Bank Check Co. was worth \$25,000?

A I had no such conception at all.

Q What would be the total valuation of the American Bank Check Co.?

A What do you mean, now?

Q No; during approximately the year 1929 or 1930 or 1931, during that period of time?

A Well, somewhere around 20 or 25 thousand dollars.

(Testimony of Harman L. Hutson)

Q That would be the total value?

A Yes.

Q And has that valuation increased from that time, or has it decreased?

A Increased somewhat; not a great deal.

Q In other words, it rose from the adding of new machinery and equipment, but the old has deteriorated?

A We added some new machinery since that time. That would increase its value somewhat.

Q Now, at the time you were informed that the company in Los Angeles, referring to the C. S. Hutson Company, had set up on their books a valuation of \$25,000 for a 25 per cent interest in your company—you say that information came from your son?

A I think so, yes.

Q Did you have any conversation with your son with respect to that matter as to why the matter was set up as \$25,000?

A I did not.

Q Did he make any statement to you as to why?

A I don't think he ever gave me any information on it, but he did state to me that one-fourth interest—in other words, one-half of his interest—had been transferred to the company. And I didn't think that was possible, as he had no interest, had nothing to transfer.

Q Did you have any conversation, or did Mr. C. S. Hutson have any conversation with you, that why he charged the company that interest was in order to offset a personal indebtedness of his?

A He didn't say that to me.

Q He never made any statement about that?

A No.

(Testimony of Harman L. Hutson)

Q Did he ever show you the books as to what had been set up? A No.

Q He merely came up to you on one of his trips up here and told you what had been done? A Yes.

Q With respect to the original purchase of the machinery and equipment in the American Bank Check Co., you will recall that this morning I showed you the ledger of the C. S. Hutson Company, in which they reflected that the C. S. Hutson Company had purchased for the American Bank Check Co. various pieces of equipment and machinery, beginning in March of 1928 and up until December, 1928, at which time they show an advance by C. S. Hutson Company to the American Bank Check Co. of approximately \$4,989.57?

A Let me correct you, Mr. Myers, a little bit. That was not one of the ledgers of C. S. Hutson & Company that you showed me.

Q Yes, Mr. Hutson, that was the one I brought up from the south.

A It was our ledger from here that some way or other got down there.

Q Included in that entire ledger are all the books of the C. S. Hutson Company that were records of the Trustee that were turned over by Mr. C. S. Hutson.

A That ledger you showed me was our original ledger.

Q You mean just the sheet I showed you?

A No; that book and all those. It must be that C. S. took it down there. We set up a new set of books under the supervision of a certified public accountant. He put in a system of bookkeeping for us and we started in with that.

Q Well, as I recall, Mr. Hutson, our conversation this morning with respect to that account—I may be in error

(Testimony of Harman L. Hutson)

but I want to clarify my own mind as to this situation—I believe you stated that you were under the impression that this company had paid all its own bills and C. S. Hutson had never paid any bills for the machinery?

A That isn't exactly correct. I paid practically all the bills. As a matter of fact, I have paid all of them. They rendered a bill to me, which I paid them.

Q That was paid by a check from the American Bank Check Co.?

A Yes.

Q During this entire period of time, since August, 1928 up until the present time, you have had various accounts between the American Bank Check Co. and C. S. Hutson Company for purchases you had made back and forth, and credits and payments back and forth, as between the two of you?

A Yes.

Q And do you recall, or is it your best information, that in the payment of the money, whatever money C. S. Hutson advanced for the purchase of equipment at the inception of the American Bank Check Co., that that account was included in this open current account between your two companies and eventually was paid off? Or did you pay it off in one check for all the money that he advanced?

A I paid several of those—most of the bills for machinery and things were paid direct to the people it was purchased from by one check, and my recollection is it was \$980.

Q Do you recall the amount of the original investment in the American Bank Check Co.?

A Somewhere around \$13,000 or \$14,000.

(Testimony of Harman L. Hutson)

Q I don't mean by that how much was purchased on these contracts. I mean how much money it was started with.

A Just a shoe string.

Q It started on just a shoe string. In other words, you bought on contract and kept the payments up?

A Yes.

Q Have you any recollection of the amount of money you originally started with, the original down payments that were advanced on the machinery?

A They were made before I came up in August. Whatever down payments was made before that, and I had to settle for them afterward. I had to reimburse those that had been paid.

Q I think, Mr. Hutson—did I ask you whether or not, from the time of August, 1928 up to the present time—the time when you moved to San Francisco, from that time you did not draw any salary from the C. S. Hutson Company?

A No.

MR. MYERS: I think that is all.

CROSS EXAMINATION

MR. McNAB: Q Just a few questions. I understood you to say on direct examination that you owned 171 shares of the C. S. Hutson Company, a corporation, is that correct?

A Correct.

Q Now, did you subscribe for any of that stock?

A No.

Q How did you acquire that stock?

A Well, by gift. We were living in Michigan when Charley started in business down there, in 1917. He

(Testimony of Harman L. Hutson)

made a present to his mother and me, each of us 150 shares apiece, with a value of \$10.

Q And you were living in Grand Rapids, Michigan, at that time? A Yes.

Q Do you recall which year that was?

A I think 1917.

Q Now, with reference to the 21 shares of stock, how did you obtain that?

A That come in the way of stock dividends.

Q As stock dividends. And that was given to you by whom?

A C. S. Hutson.

Q When did you sever your official connection with C. S. Hutson Company?

A When I come up here. I believe it was August, 1928.

Q What previous position did you hold in that company?

A I was vice-president.

Q Did you tender your resignation in writing?

A No.

Q Did you tell anyone that you were resigning?

A I don't think so. But the very next—I think it was in October that they had their annual meeting and elected someone else in my place.

Q Do you recall who that was? A No.

Q And now, Mr. Hutson, since August of 1928 down to the present time where have you lived?

A In San Francisco.

Q You have been living here all of that time?

A Yes.

(Testimony of Harman L. Hutson)

Q I understood you to say on direct examination that your son originally started the American Bank Check Co. Is that correct? A Correct.

Q Do you recall what month and year that was?

A I can only tell you that it commenced operation in April.

Q 1928?

A And they probably were busy accumulating machinery and things like that for quite a few months or more prior to that.

Q You heard counsel ask you whether or not it was originally a co-partnership?

A It was not originally.

Q It wasn't originally?

A C. S. started this thing alone and it wasn't a partnership until after I came up here.

Q Counsel also asked you something about a dissolution of partnership. Did you understand what he meant by that?

A I meant that C. S. and I had some dispute in regard to a claim that he owed me.

Q Will you kindly state to his Honor and for the benefit of the record just what that discussion or dispute was?

A C. S. Hutson owed me some money personally and I wanted an adjustment made of it. It had been running along several years and I wanted it adjusted and I fussed along with it a long time trying to get an adjustment, and finally I told him I was going to take all his one-half interest in the American Bank Check Co. and hold it until he did something about adjusting my claim.

(Testimony of Harman L. Hutson)

Q Did your son make any objection to that?

A He didn't think that was the right thing for me to do, but I said, "I got enough. This thing has got to be adjusted."

Q Has your son ever participated in the business since you took it over—was that August, 1928 that you took it over?

A I took it over myself in 1931.

Q Now, from 1931, from the time you took over the business, have you consulted your son as to how the business is to be operated?

A Absolutely no.

Q Has he had anything to do with the operation of the business?

A No.

Q Has he protested or said that you did not have the right to run that whole business?

A Yes.

Q Has he ever paid any of the bills?

A Nothing.

Q. Has he ever rendered any accounts to you?

A No.

Q Has he demanded that you account to him?

A No, he never has.

Q So far as that business is concerned, who has carried on the dealings with the trade here in the City and County of San Francisco?

A I have done it all.

Q You paid all the bills?

A Yes.

Q Employed all the help?

A Yes.

Q And discharged the help, if necessary

A Yes.

Q You have never consulted anybody else?

A No.

Q And from 1931 to the present time you have always believed, and you still believe, that you are the sole and exclusive owner of that business, is that correct?

A Yes.

MR. McNAB: That is all.

(Testimony of Harman L. Hutson)

REDIRECT EXAMINATION

MR. MYERS: Q. May I ask one further thing: With respect to this situation, where you stated at the time you made this adjustment with Mr. Charley Hutson, you told him you were going to take over his interest and hold it until he straightened out the old debt, did you take it over and hold it—

A (Interrupting) I think I told him I would hold it until some adjustment was made.

Q Was there any further talk about it?

A We talked about it several times, but there has never been any adjustment made.

Q In order to make myself clear: Do you maintain that you are merely holding that interest?

A I maintain now I own it because he didn't make any adjustment. I said I wanted any adjustment made and I said, "If you don't I am going to take over and hold it as my own," which I have done.

Q About what time, what date, do you consider that you took over the business and run it as your own and not just hold it as an adjustment?

A Well, there has never been an adjustment. I took it over in 1931, I think in July, 1931, and have held it ever since.

Q And at the inception you were going to hold it until an adjustment was made?

A That was the talk I had with him. He has never come across with an adjustment.

(Testimony of Harman L. Hutson)

Q Did you ever, at any time notify him you were taking it over completely?

A Nothing more than that.

Q Nothing more than that original conversation. But you maintain that since 1928 you are the sole—since 1931 that you are the sold and exclusive owner of the American Bank Check Co. and that Mr. C. S. Hutson, or C. S. Hutson Company, never have had any interest whatsoever in this American Bank Check Co. since that time on?

A No.

Q Do you maintain that the C. S. Hutson Company owes you any money?

A No, I don't think there is anything. I haven't the bills. If it does it belonged to my son and not to me, because when I took that over I cancelled all the accounts he had.

Q In other words, you took over the American Bank Check Co. in 1931 in full settlement of any money your son or C. S. Hutson Company owed it?

A Yes.

RE CROSS EXAMINATION

MR. McNAB: Q Mr. Hutson, is it or is it not a fact that in 1931 you had a certified public accountant come into your place of business and set up some books for you?

A I am certain he set up the books, but I don't remember that date exactly.

Q But you did have a set of books? A Yes.

Q In 1931 A Yes.

(Testimony of Harman L. Hutson)

Q And you maintained that set of books until the present time? A. Until the present time.

Q Are those books in your possession now?

A Yes.

Q And have been since that time? A Yes.

Q Do you recall the name of that certified public accountant? A Charles Ringold.

Q Where is his place of business, or where was it at that time?

A He was here at the time. He is in the east now. The last I heard he was in Detroit.

Q Do you recall where his office was in San Francisco?

A He come down to our place here.

Q And set up these books for you? A Yes.

Q. You are operating under that system ever since?

A Yes.

MR. McNAB: *T*hat is all.

MR. MYERS: That's all.

THE MASTER: Mr. Myers, I suppose you will take care of the reporter's fees? You want this written up?

MR. MYERS: Yes.

MR. McNAB: And I would like a copy.

[Endorsed]: Filed Dec 7 - 1936 at min. past 10 o'clock A. M. Hugh L. Dickson, Referee C. M. Commins, Clerk C D Filed Apr 13 1938 at 55 min. past 4 o'clock P. M. R. S. Zimmerman, Clerk M J Sommer Deputy.

[TITLE OF DISTRICT COURT AND CAUSE.]

TRANSCRIPT OF HEARING ON OBJECTION
TO CLAIM OF C. S. HUTSON,
ON APRIL 12, 1937.

APPEARANCES:

For the Trustee: GERALD W. MYERS, Esq.

For the Claimant, C. S. Hutson: ROBERT B.
POWELL, Esq.

—oOo—

LOS ANGELES, CALIFORNIA, APRIL 12, 1937.
2:00 P. M.

—oOo—

THE REFEREE: In the matter of C. S. Hutson & Company. Is Mr. Hutson here, Mr. Powell?

MR. POWELL: No, I would like the record to show that I informed him this morning that we would go on with the matter at 2:00 o'clock, whether he was here or not.

THE REFEREE: All right.

MR. MYERS: There are two matters, one is the order to show cause of Mr. Hutson himself, on the Trustee.

THE REFEREE: What do you want to do about that?

MR. POWELL: We will proceed on both of them.

MR. MYERS: Which one do you want to proceed on first?

MR. POWELL: On the claim first. We will proceed first on the Trustee's objection to the claim. And then this evidence that is produced on the objection to the claim will not be applicable to the petition of Mr. Hutson.

(Testimony of Mr. Gosling)

MR. MYERS: What do you mean by applicable?

THE REFEREE: Well, let's get started.

MR. MYERS: Mr. Gosling, come forward.

THE REFEREE: We are now on the objection to the claim of Mr. Hutson, in the sum of seventy-five hundred dollars.

MR. GOSLING

called as a witness on behalf of the Trustee, having been first duly sworn by the Referee, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MYERS:

Q Mr. Gosling, you were auditor and in charge of the books of C. S. Hutson & Company for what period of time?

A 1931, 1932, 1933 and 1934.

Q And had the books in your possession at that time, and you were keeping charge of those books?

A Yes, sir.

MR. POWELL: Was that the time, in 1931, when you started in the employ of Hutson & Company?

A I don't remember whether it was 1930 or 1931. I started in November, I think, but I don't know which year it was.

BY MR. MYERS:

Q In your duties as auditor of this company, did you have access to the C. S. Hutson books for all of the period of time?

A All that were in my possession.

(Testimony of Mr. Gosling)

Q Did you have access to all the books that were back of that in 1926, 1927, 1928 and 1929?

A There were a lot of books missing in the old days, and I couldn't tell you.

Q I show you what purports to be the journal and ask you if you recognize that?

A Yes, I recognize it.

Q Now, calling your attention particularly to an item in the journal of 1929—

THE REFEREE: Did you keep those books? Do you know anything about those books, having been the auditor of the company?

A Yes, sir.

THE REFEREE: The one you have in your hand?

A Yes.

THE REFEREE: All right.

BY MR. MYERS:

Q That's one of the books of the C. S. Hutson & Company?

A Yes, sir.

Q That's the journal?

A Yes, sir.

Q Calling your particular attention to items, journal entry No. 222 and 223, that is December 31, 1929.

A I can't find that number here.

Q Do you find any journal entry for December 31, 1929?

A Journal entry 1994 and 1993 and 1994-A.

Q Was there a date there December 31, 1929 in that journal?

A Are you talking about the page number or journal entry number?

(Testimony of Mr. Gosling)

Q It says journal number.

A No.

Q Do you have the date in December 1929?

A Yes, December 29, 1929.

Q Do you find December 31, 1929?

A There is no December 31 here.

Q Do you find an entry in the end of December, 1929, in which the sum of \$6,371.19 was credited to Mr. C. S. Hutson's personal account, and charged against the salary of H. L. Hutson?

MR. POWELL: Mr. Gosling, you didn't keep the books as of December 31, 1929, did you?

A Yes, this is my handwriting.

MR. POWELL: Then you were mistaken when you said you came there in 31?

A Yes, I didn't know it.

MR. POWELL: Refreshing your recollection, could you clear that up and advise when you came there?

A I think I can tell you the first journal I wrote, and that will tell you the tale. It looks to me like I came in September, 1928, here is my handwriting.

BY MR. POWELL:

Q September, 1928?

A Yes, sir.

Q How long have you lived in Los Angeles?

A Since 1923.

Q What business were you in in 1923?

A I came down here from Fresno, I was in the public accountant business. Do you mean 1923?

Q Yes.

A I couldn't tell you.

Q Were you a certified public accountant?

A No.

(Testimony of Mr. Gosling)

Q Did you ever have your own firm or place of business?

A Yes.

Q And did you do any work for the Hutson Company when you had your own business?

A No.

Q The only connection you had with the Hutson company was as an auditor?

A That's right.

Q And you now state that you were employed by the Hutson Company in 1928?

A It must have been, that's when I see my handwriting here, September 1928.

Q Could it be possible that you had made those entries in the books in 1930 and 1931, and dated them back as of 1928?

A No, I don't do that.

Q Have you ever done that while you were connected with the Hutson Company?

A Not to my knowledge.

Q Isn't it a fact that for a time the Hutson books were not kept in shape and then postdated?

A Not that I know of. They might have been previous to my time. Not that I know of.

Q Your best recollection is now that if that entry bears date 1928 or 1929 you made it on that date?

A Well, during that month. Yes, these entries were all made generally at the end of the month.

Q Can't you refresh your recollection as to the date 1928 or 1929 and give us an answer as to whether you were employed by the Hutson Company in 1928 or 1929?

A I must have been, because here in 1928, in September, is my handwriting.

(Testimony of Mr. Gosling)

MR. MYERS: Does your handwriting follow right along?

A Yes.

BY MR. POWELL:

Q In May 1927 you were not here?

A No.

Q Let's turn over here to your handwriting.

A Yes.

Q That's your handwriting there (indicating)?

A Yes.

Q And this is Simmons'?

A Yes.

Q So evidently the first entry you made would be in September of 1928?

A That's right.

Q Your best recollection is those entries were made in September of 1928?

A That's right.

THE REFEREE: These are Mr. Hutson's books. I don't see how you can question the accuracy of his own books. When he files a claim here in this manner, based upon his books, it doesn't seem to me he can attack his own books.

BY MR. MYERS:

Q Do you find the entries as of December 31, 1929, in which a charge was made to H. L. Hutson's account of \$6,371.19, and credited to Mr. C. S. Hutson's personal account?

A There is a journal entry here which gives Mr. Hutson credit of \$6,371.19, and charged against H. L. Hutson of \$10,290.29.

(Testimony of Mr. Gosling)

THE REFEREE: Who is H. L. Hutson?

A That was his father, the father of C. S. Hutson.

Q Now, what was the credit?

A Credit to Mr. C. S. Hutson was \$6,371.19.

BY MR. MYERS:

Q What was the journal explanation as to those items?

A There is not any.

Q Do you know of your own knowledge what that item of \$6,371.19 credited to Mr. C. S. Hutson's personal account represented?

MR. POWELL: Just a second before that. I don't find any conversations you might have had with Mr. Hutson or Mr. H. L. Hutson. Let's lay the foundation as to how he might have acquired any knowledge.

THE REFEREE: Do you know anything from what C. S. Hutson told you as to how it was that he took credit for sixty-three hundred odd dollars, and charged his father, H. L. Hutson, with ten thousand dollars? Do you know how that came about?

A Well, it was an old deal. I can't tell exactly.

Q This was what C. S. Hutson told you?

A Yes.

BY MR. POWELL:

Q Let's see if you can give the words, if possible?

A I can't tell you that.

BY MR. MYERS:

Q You can tell the gist of it, can't you?

A There was some kind of a thing between the American Bank Check Company, who owed the company money, and Mr. H. L. Hutson, who he had on the pay

(Testimony of Mr. Gosling)

roll. It was an old mixed up account, I couldn't tell you how many years it went back. He decided to wipe it out. In other words, he credited his account and credited himself, and let it go at that.

BY MR. MYERS:

Q What was the balance of that \$10,000 credit?

A Then we credited the American Bank Check Company for \$3,919.10.

Q And \$6,371.19 to Mr. C. S. Hutson's personal account?

A Yes.

Q Who owed the account of ten thousand two hundred some odd dollars, what was that charged against? Who had the credit for that amount of money?

A H. L. Hutson. That's my recollection of it.

MR. POWELL: That's what the books say, isn't it?

A Yes.

BY MR. MYERS:

Q What does that journal entry refer to now? What book would you have to have to show who had the credit for that amount?

A I would have to look at the general ledger.

Q For what year?

A For 1929.

THE REFEREE: Let me ask you a question for my own information. When a man hires out as a book-keeper for a company, for any kind of concern, is it customary for him to make entries in a set of books without any knowledge as to the source from which the charge is made? Do you have any written bills or statements of

(Testimony of Mr. Gosling)

any sort, or do you just enter into the book whatever happens to come into your mind?

A Oh, no.

Q How do you keep books anyhow?

A From records.

Q There was no record of this \$10,000 transaction, was it?

A I am trying to find out now. I don't remember, that was nine years ago.

BY MR. MYERS:

Q Mr. Gosling, calling your attention to the journal, which is listed 223, being December 29th—

MR. POWELL: Is that in his handwriting?

BY MR. MYERS:

Q Is that your handwriting?

A Yes.

Q Does the entry beginning Investment Account \$18,000; American Bank Check Company, C. S. Hutson, \$10,100; C. S. Hutson, and so forth, \$7900 per resolution Board of Directors, December 17, 1929, C. S. Hutson & Company purchased from C. S. Hutson 18 per cent of the American Bank Check?

A All of that has some bearing on it. There was a resolution passed by the Board of Directors. We had the minute book—if I had that minute book I could probably tell you.

Q The first purchase was an 18 per cent interest in that company, is that right?

A That's right.

Q And that 18 per cent interest represented how much money?

A \$18,000.

(Testimony of Mr. Gosling)

Q And the \$18,000 was charged to the Investment Account as a credit in the Investment Account of \$18,000, representing an 18 per cent interest in the American Bank Check Company?

A That's right.

Q And the \$18,000 was then charged against or credited rather to Mr. C. S. Hutson of \$10,100, and \$6,371.19; is that right?

A No, there was \$10,100 credited to C. S. Hutson, his open account, and \$7,900 was credited to his notes receivable account.

Q So that that transaction would show, from your books, that Mr. C. S. Hutson was selling to the C. S. Hutson & Company an 18 per cent interest in the American Bank Check Company, for which he obtained credit on his open account of \$10,100, and credit to a notes receivable, which the corporation held, of \$7800?

A \$7900.

Q \$7900?

A That's right.

MR. POWELL: That's what the books reflect?

A Yes, that was all done through the resolution of the Board of Directors.

THE REFEREE: Who were the Board of Directors?

A. Mr. Hutson, Mr. Flynn, Mr. Sterling, Mr. Hoyt, and I am not sure whether Mr. H. L. Hutson was a director at that time.

BY MR. MYERS:

Q Now, would you refer back to that H. L. Hutson personal account, in which the item of \$6,371.19 appears?

A Here it is. You want the C. S. Hutson account then, don't you?

(Testimony of Mr. Gosling)

MR. POWELL: This is a different book.

BY MR. MYERS:

Q You are now referring to the general ledger of C. S. Hutson & Company for 1929; is that right?

A That's right. Here is where he gave Mr. Hutson credit for that.

Q Credit for what amount?

A \$6,371.19.

Q What did that credit—or rather where did that come from?

A That came from this American Bank Check Company deal.

Q Where did you get the credit?

A H. L. Hutson deal, rather, as of December 31, 1929, according to the books we owed H. L. Hutson \$10,290.29.

Q That's what your books reflect that you owed Mr. H. L. Hutson?

A Yes.

Q And you used that credit of Mr. H. L. Hutson in what manner?

A Gave Mr. C. S. Hutson credit for \$6,371.19.

Q Upon what account?

A His personal account.

THE REFEREE: Was he overdrawn, owed the company that much at that time?

A Well, let's see now. Yes, he was overdrawn at that time.

THE REFEREE: This \$6300 was to clear that up?

A That \$6300, plus the \$10,000, that gave him a credit balance.

(Testimony of Mr. Gosling)

Q Let's see if I get you right. As you understand the transaction, after these deals had been made in your books, giving credit to C. S. on H. L. Hutson, the C. S. Hutson Company then owned by purchase, 18 per cent of the stock of the American Bank Check Company of San Francisco?

A The American Bank Check Company, yes, sir.

BY MR. MYERS:

Q And that's the company his father was running in San Francisco?

A Yes.

Q Now, do you know of your own knowledge whether or not during the year 1929, Mr. H. L. Hutson was working in the C. S. Hutson Company's plant in Los Angeles?

A No.

Q Was he working there?

A I don't think so. I wouldn't swear to it. At one time he was credit man there.

Q Was he ever working there during the time you were working there?

A No.

Q He was never employed there?

A He got a salary for doing work for C. S. Hutson & Company in San Francisco.

Q Did you credit him on the books his salary as an employee of C. S. Hutson & Company?

A Yes.

Q At what rate?

A Part of the time it was \$400, and part of the time it was \$200.

(Testimony of Mr. Gosling)

Q And the \$10,000 credit to the H. L. Hutson account was a credit built up from salaries credited by the month?

A Do you mean after that?

Q No. What makes up that \$10,000 figure of the H. L. Hutson Company?

A Well, that's back salary, plus other moneys. That was an old account.

Q How much was the back account?

A The old back account \$6,711.79.

Q Do you know what makes up that account?

A Offhand I would say it was an old salary account. But I wouldn't swear to it.

Q And the difference between the \$6700, which shows to the old account, up to the \$10,000, was built up by salary credited by the month?

A That's right.

Q And then the salary account of H. L. Hutson was then wiped off of the books by crediting \$3000 and some odd dollars to the American Bank Check Company, and the \$6,371.19 credited to Mr. C. S. Hutson's personal account?

A That's right.

Q Now, will you take that journal and go down to April 30, 1930, and I think that's journal No. 233 in 1930.

A Page 233. Was that April or March?

Q April 30th.

A Here is April. What are you looking for, that Investment Account?

(Testimony of Mr. Gosling)

Q The \$7000 amount.

A That's right, \$7000.

Q Now, that entry shows in the journal, which is journal entry No. 2031, April 1930; calling your attention to an item of \$7000, and will you tell me what that item represented?

A That's a charge of \$7000 to the Investment Account; credit to C. S. Hutson of \$7000, to record purchase from C. S. Hutson of additional seven per cent interest in the American Bank Check Company, making 25 per cent in all. See resolution of Board of Directors 2-5-30.

Q That, then, built up your Investment Account to \$25,000?

A Yes.

Q And the credit in the Investment Account being a 25 per cent interest in the American Bank Check Company?

A Yes.

Q And the entire charge against that Investment Account was a credit to the C. S. Hutson account of \$25,000, recording a sale of that amount?

A Yes, that's right.

Q And that credit was given to his own personal account?

A That's right.

Q Now, did you ever have any evidence or document or bill of sale or acknowledgment of any sort from the

(Testimony of Mr. Gosling)

American Bank Check Company, which ever came into your possession as the auditor of this company, showing that there was any ownership of 25 per cent in the American Bank Check Company?

MR. POWELL: I object to the phraseology of that. I have no objection to asking him if he had ever seen any certificate.

THE REFEREE: That might be so. Did you ever see any indication in writing of the ownership of C. S. Hutson & Company of any interest whatsoever in the American Bank Check Company of San Francisco?

A In the old books there were some entries whereby the C. S. Hutson & Company purchased equipment and other material, paper, I believe it was, for the American Bank Check Company. The amount I could not tell you, I believe it was \$4000 or \$5000.

Q Do you know whether that American Bank Check Company was a corporation?

A There was a particular thing there—

Q (Interrupting) Well, do you know whether it was a corporation?

A No, I don't.

Q So far as your answer now is, there is an entry on the books showing that the C. S. Hutson Company had advanced to the American Bank Check Company, of a certain amount of money. That's the only evidence of any entry you ever saw in that company?

A That's all I ever saw. One time I kept the books of the American Bank Check Company down there for a few months, but what became of them I don't know.

(Testimony of Mr. Gosling)

BY MR. MYERS:

Q Do you have an entry in that book which shows that the American Bank Check Company has a ledger account?

A I don't know, I don't remember, I don't believe there is any American Bank Check Company here. I don't locate it.

Q Do you know what year that American Bank Check Company was started?

A It was before my time. I could say it was about 1926 or 1927. There was a small book though that had all the stuff in it about it.

Q I am now calling your attention—will you take that original journal book that you have down there, and go to August 21, 1924. I think it should be your page No. 425.

A Here is page 425.

Q Calling your attention to the item of August 21, with respect to the \$3500, read that.

A It's a charge to C. S. Hutson of \$3500. Cash account, C. S. Hutson, \$3500. Transfer as per instructions of C. S. Hutson.

Q Do you know what that \$3500 represents?

A Well—

MR. POWELL (interrupting) Of his own knowledge.

BY MR. MYERS:

Q You were there at the time the entries were made?

A Yes.

Q You were there just prior to August 31, 1934?

A Oh, yes.

(Testimony of Mr. Gosling)

Q That being the time, or approximately the time the attachment had been on the plant for about a month?

A Yes.

Q Do you know of your own knowledge what disposition was made of the collections of C. S. Hutson & Company?

A Yes, the checks were cashed by Mr. Hutson, and he took a receipt for everything he spent. He usually gave me the receipts, and I added them up there as the cash received.

Q Do you have your cash book with you?

A That's in the cash book.

Q Which one of these books would it be?

A I don't see it here—it's a big long book. It's a book like this one (indicating).

Q Did you have a trustee's account?

A Here is the trustee's account.

Q I don't mean a trustee under bankruptcy. I mean did you carry a C. S. Hutson trustee account during the time the money he collected was under attachment?

MR. POWELL: Objected to as incompetent, irrelevant and immaterial.

BY MR. MYERS:

Q I will show you the ledger for 1934.

THE REFEREE: Objection overruled.

A Yes, here is the—there don't seem to be any here.

Q You remember when you showed me in these books this very item of \$3500?

A That's what I am trying to find now. I don't find it.

Q Do you have any independent recollection as to what the \$3500 represented?

A Yes, it was collections.

(Testimony of Mr. Gosling)

MR. POWELL: Objected to as the books are the best evidence. He has already testified—

A (Interrupting) Here is the item, I have found it.

BY MR. MYERS:

Q What are you referring to?

A To this journal entry, 2576.

Q And which journal reads transfer of cash to C. S. Hutson's personal account, as per his instructions, \$3500?

A Yes, we charged his personal account with \$3500.

Q Charged or credited?

A Charged his personal account.

THE REFEREE: What does that mean in the plain language of the street. He got \$3500 of the money of C. S. Hutson & Company, and charged it on the books?

A He would take the money, and I had to charge it to him.

Q Am I to understand that Hutson, by some means or other, got hold of \$3500 that belonged to the C. S. Hutson & Company and he kept that, and said, "Charge me on the books of the company with \$3500"?

A That's right.

MR. POWELL: Just a minute, before making my objection I would like to have that answer stricken.

THE REFEREE: All right, it will be stricken for the objection.

MR. POWELL: Object to the question on the ground it asks for a conclusion of the witness. It says he took from the company moneys that belonged to the company.

THE REFEREE: I didn't say that, I said he assumed possession of money of \$3500, and then told this gentleman to charge it on the books against C. S. Hutson. Objection overruled.

(Testimony of Mr. Gosling)

MR. POWELL: Exception.

THE REFEREE: Now, is that the understanding that you want me to draw, or that I should probably draw from your explanation here?

A Let me go a little further, your Honor. Mr. Hutson collected this money, and I charged his account, which I had to do; and then we credited his account with whatever he expended of the receipts. Here are the amounts, if he spent it we credited him. Pay roll and paper and ink, we had to pay in cash.

Q Was the place under attachment at that time?

A No, it was just before we went into the hands of the receiver.

BY MR. MYERS:

Q And this \$3500 represents the balance of those funds which he was charged with and not accounted for?

A Yes.

Q He had had a good deal more money than that?

A Yes.

Q What did you call that account.

A One of them is the C. S. Hutson personal account, drawing account, and the other is the cash account of C. S. Hutton.

Q When did that account open?

A July 31, 1934, is the first entry here.

Q And you closed out the account as of what date?

A August 21, the entry is to trustee, \$543.57.

Q To trustee \$543.57?

THE REFEREE: Who was the trustee at that time?

A The books said Sinclair.

(Testimony of Mr. Gosling)

BY MR. MYERS:

Q When is the closing entry under the \$3500?

A The last entry we have on the journal entries is August 20, 1934, and the cash account C. S. Hutson.

MR. MYERS: That's all, take the witness.

CROSS EXAMINATION

BY MR. POWELL:

Q Mr. Gosling, from the books that you have here, and the books you examined can you tell me, as of July 21, 1934, the status as to the books, that is, as to the last entry of Mr. Hutson's account with the company, that is, whether he has a credit with the company or a debit?

MR. MYERS: I *will glad* to hand you, Mr. Powell, a copy of the resume of the C. S. Hutson account beginning in 1926, showing all of the charges and credits to Mr. C. S. Hutson's account from that period on, and desire to file a copy of it.

MR. POWELL: I object to filing it. I am glad you handed them to me though.

THE REFEREE: All right, I won't look at it.

BY MR. POWELL:

Q As of March 1, 1934—

THE REFEREE (Interrupting): What I would like to know is just one single question, if I can have an answer to it. Does this company owe Hutson money, or does Hutson owe the company money?

MR. POWELL: That is the question I am asking now.

MR. MYERS: I am perfectly willing to stipulate that the books reflect, as of the close of business March 1,

(Testimony of Mr. Gosling)

1934, that the account of C. S. Hutson shows that the corporation was indebted to him in the sum of \$7400.54. That is including the \$25,000 credited to the account for the American Bank Check Company; including the \$6371 charged or credited to the C. S. Hutson account from salary charged against his father, and including credits of \$3500 of the trust money which he collected prior to the time the matter went into bankruptcy.

MR. POWELL: I will accept the stipulation, but I would like to withdraw from the stipulation the trust money. That's for the court to decide.

MR. MYERS: That's all right. It is the money he collected during the time of attachment on the plant, prior to the time the involuntary bankruptcy proceedings were had against him.

MR. POWELL: So that as far as the books show, Mr. Hutson has a credit on the books, the book account, of \$7400.54?

MY MYERS: Yes.

THE REFEREE: And that C. S. Hutson also has a 25 *per interest* in the American Bank Check Company?

MR. POWELL: Yes.

THE REFEREE: And am I to take into consideration that H. L. Hutson testified in San Francisco that he had no interest in that business?

MR. POWELL: I think you are to close your mind on that.

THE REFEREE: I saw a certified copy of the proceedings.

MR. MYERS: Yes, sir, I know your Honor read it, and Mr. Powell has read it too.

MR. POWELL: That's all with this witness.

(Witness excused.)

THE REFEREE: This claim will be disallowed in toto.

MR. POWELL: Can I ask the court, disallowed on the evidence that has been rendered here today?

THE REFEREE: Yes.

MR. POWELL: I take exceptions.

* * * * *

MR. MYERS: We desire to introduce the general ledger for 1929; this is on the proceedings we had just previous to this, and also 1930, 1931, 1932, 1933 and 1934, and the journal entry with respect to the items which we questioned. It will not be necessary to introduce the other records, inasmuch as you are withdrawing your claim on that. And we also desire to introduce in evidence the transcript of H. L. Hutson's testimony in San Francisco under an order of special reference.

MR. POWELL: If this pertains to the proceedings already decided, we object to that as it has already been decided, and I have already noted my exceptions to the court's order.

THE REFEREE: Mr. Powell, as I said a while ago, I can't disabuse my mind of all the facts in this case. This deposition was taken up there, I think under an order made by me, and it is part of these proceedings, this whole bankruptcy proceedings. I don't see how I can wipe it from my mind. I am going to permit the filing of that.

MR. POWELL: If the court allows the reopening, could we have a formal introduction, so I can make my objection to it?

MR. MYERS: Do you want me to introduce them separately?

MR. POWELL: Yes.

MR. MYERS: I offer the general ledger of the C. S. Hutson Company for 1929, 1930, 1931, 1932, 1933 and 1934, and the journal of the C. S. Hutson & Company for the same period of time; that's in support of the opposition to the claim of C. S. Hutson for \$7400.

MR. POWELL: Objected to as the books have already been examined, and on the further ground testimony has already been introduced concerning the contents of the books, to which no objection was made. I object to any other part or portions of the books.

THE REFEREE: I think it ought to be limited to those parts—

MR. MYERS (Interrupting): With respect to the C. S. Hutson and the H. L. Hutson accounts only.

MR. POWELL: I have no objection to it being considered that the books are introduced to corroborate Mr. Gosling's testimony, and inasmuch as Mr. Gosling read the entries themselves, I think it is unnecessary for the books to be introduced.

THE REFEREE: I think so too, Mr. Myers.

MR. MYERS: Only if there is an exception taken to this ruling, and a review goes up, then with respect to those particular matters which we talked about, which was the H. L. Hutson account, which shows the adding of the salary accounts during the time Mr. Gosling testified.

THE REFEREE: I will grant permission for them to be introduced in evidence, and overrule the objection, and you may have an exception.

MR. MYERS: I also desire to introduce in evidence a reporter's transcript of the testimony of H. L. Hutson, taken before Bertram W. Wyman, special master in bankruptcy, in the matter of C. S. Hutson, a bankrupt, No. 23748, at San Francisco, September 17, 1936.

MR. POWELL: Objected to as incompetent, irrelevant and immaterial; there has been no showing that this proceeding taken before the Special Master Wyman has any bearing on the present objection to the claim, and on the further ground that C. S. Hutson was not present at said hearing, nor was his counsel, and on the further ground that no notice of the hearing of the taking of the testimony was given to C. S. Hutson.

MR. MYERS: May we have a stipulation, Mr. Powell, that Mr. Hutson actually knew of the hearing and was actually present in San Francisco, but not in the hearing room?

MR. POWELL: I think that's immaterial.

THE REFEREE: Objection overruled and exception will be allowed. You may have an exception.

MR. POWELL: I will take my exception to that, and also my exception to the order of the court heretofore made.

THE REFEREE: That is all.

STATE OF CALIFORNIA)
) ss
 County of Los Angeles)

I, M. A. Clark, official reporter for the Hon. Hugh L. Dickson, Referee in Bankruptcy for the United States District Court, Central Division, Southern District of California, do hereby certify that the foregoing pages, 1 to 28, both inclusive, comprise a full, true and correct transcript of the testimony taken and proceedings had on the 12th day of April, 1937, in the matter of C. S. Hutson & Company, Bankrupt, in relation to a hearing on the objections of the Trustee to the Claim of C. S. Hutson.

Dated this 16th day of April, 1937.

M A Clark
 Official Reporter

[Endorsed]: Filed Apr. 16, 1937 at 50 min. past 9 o'clock A. M. Hugh L. Dickson, Referee C. M. Commins, Clerk. Filed Apr. 20, 1937 at 3 min. past 4 o'clock P. M. R. S. Zimmerman Clerk M. J. Sommer, Deputy.

[TITLE OF DISTRICT COURT AND CAUSE.]

STIPULATION RE EXHIBITS

IT IS HEREBY STIPULATED by and between the Appellant and the Appellee, through their respective counsel, that the following original exhibits be certified by the Clerk of the United States District Court to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, to-wit:

General Ledger entries for 1929, 1930, 1931, 1932, 1933 and 1934, and the Journal covering that period of time.

DATED this 13 day of April, 1938.

Robert B. Powell

Attorney for Appellant

Gerald Willis Myers

Attorney for Appellee

It is so ordered.

Geo. Cosgrave

Judge.

[Endorsed]: Filed April 13, 1938, 5 p. m. R. S. Zimmerman, Clerk By Francis E. Cross, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

In the Matter of)	No. 23,748-C
)	PETITION
C. S. HUTSON & COMPANY,)	FOR APPEAL
)	AND ORDER
Bankrupt.)	ALLOWING
_____)	APPEAL

TO THE HONORABLE DISTRICT COURT OF
THE UNITED STATES, SOUTHERN DIS-
TRICT OF CALIFORNIA, CENTRAL DIVI-
SION:

C. S. HUTSON, feeling himself aggrieved by the final order of the above entitled Court in the above entitled proceedings made and entered herein on June 24, 1937, affirming the order of Hugh L. Dickson, Referee in Bankruptcy in the above entitled proceedings made on April 13, 1937, disallowing the claim of C. S. Hutson filed in the above entitled proceedings in the sum of \$7400.54, does hereby petition for an appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons and upon the grounds set forth in the Assignment of Errors filed herewith, and prays that an appeal may be allowed and a citation issued directed to S. J. Coffman, Trustee for the bankrupt estate of C. S. Hutson & Company, Bankrupt, commanding him to appear before said United States Circuit Court of Ap-

peals for the Ninth Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings, and evidence of the above entitled proceedings, duly authenticated, may be transmitted to the said Circuit Court of Appeals for the Ninth Circuit, or for such other, further or different order and relief as may be meet in the premises.

Dated this 23rd day of July, 1937.

C. S. Hutson
C. S. HUTSON

Robert B. Powell
Attorney for C. S. Hutson

[TITLE OF DISTRICT COURT AND CAUSE.]

ORDER ALLOWING APPEAL

The foregoing appeal is hereby allowed, and pursuant to the provisions of Section XXV of the Bankruptcy Act, IT IS ORDERED that the amount of the costs bond to be given on said appeal is hereby fixed at the sum of \$250.00.

DATED: July 23, 1937.

Geo. Cosgrave
District Judge

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

C. S. HUTSON being by me first duly sworn, deposes and says that he is the Appellant in the above entitled action; that he has heard read the foregoing Petition for Appeal and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

C. S. Hutson

Subscribed and sworn to before me this 23 day of July, 1937.

[Seal]

C. M. Commins

Notary Public in and for the County of Los Angeles,
 State of California

[Endorsed]: Filed R. S. Zimmerman, Clerk at 7 min.
 past 1 o'clock Jul. 23, 1937 P. M. By R. B. Clifton,
 Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ASSIGNMENT OF ERRORS

Comes now C. S. HUTSON, and in support of his appeal from the order of the above entitled Court in the above entitled proceedings made and entered therein on June 24, 1937, affirming the order of Hugh L. Dickson, Referee in Bankruptcy in the above entitled proceedings made on April 13, 1937, disallowing the claim of C. S. Hutson, filed in the proceedings in the sum of \$7400.54, and sets forth that the said order of the District Court was erroneous by reason of the following:

1. The Court erred in disallowing the claim in the sum of \$7400.54.
2. The Court erred in allowing evidence to be introduced in the form of a transcript of proceedings held in ancillary proceedings in San Francisco, said proceedings not having been brought on in the presence of C. S. Hutson or his counsel, and having been brought on and maintained with no notice having been given to the said C. S. Hutson.
3. The Court erred in considering facts which were not a part of the record of the proceedings.
4. The findings and order are contrary to the evidence.
5. The Court erred in disallowing objections made to the introduction of evidence.
6. The Court erred in not following the rules of evidence and allowing the introduction of inadmissible evidence.

WHEREFORE, the said C. S. Hutson prays that said order of the District Court of the United States of June 24, 1937, be reversed, and the lower Court be directed to enter an order allowing the said claim for the sum of \$7400.54.

DATED: July 23, 1937.

C. S. Hutson
C. S. HUTSON

Robert B. Powell
Attorney for C. S. Hutson

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

C. S. HUTSON, being by me first duly sworn deposes and says that he is the Appellant in the above entitled action; that he has heard read the foregoing Assignment of Errors and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

C. S. Hutson

Subscribed and sworn to before me this 23 day of
July, 1937

[Seal]

C. M. Commins

Notary Public in and for the County of Los Angeles,
State of California

[Endorsed]: Filed R. S. Zimmerman, Clerk at 7 min.
past 1 o'clock Jul. 23, 1937 P. M. By R. B. Clifton
Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, C. S. HUTSON, as principal and MARYLAND CASUALTY COMPANY, as surety are held and firmly bound unto S. J. COFFMAN, as Trustee in Bankruptcy of the estate of the above named C. S. Hutson & Company, a corporation, in the sum of FIVE HUNDRED AND NO/100 - - - (\$500.00) - - - DOLLARS, to be paid to him, or his successors, to which payment the undersigned surety binds itself, and its successors and assigns.

Signed and dated this 2nd day of August, 1937.

WHEREAS, in the above entitled proceedings on the 24th day of June, 1937, an order was made by the above entitled Court, affirming an Order made before Hugh L. Dickson, Referee in Bankruptcy, disallowing the general claim filed by C. S. Hutson for the sum of \$7400.54, and said C. S. Hutson has appealed from said Order of the Court made on said 24th day of June, 1937, to the United States Circuit Court of Appeals for the Ninth Circuit.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said C. S. Hutson in prosecuting such appeal to effect, shall pay all costs if

said C. S. Hutson shall fail to make the appeal good, then the above obligation shall be void; otherwise, to remain in full force and effect.

C. S. Hutson

[Seal] MARYLAND CASUALTY COMPANY

By N. C. Andrews,
Attorney-in-Fact

Examined and recommended for approval pursuant to Rule 28:

Hubert F. Laugharn

Attorney

The foregoing Bond is hereby approved this 2nd day of August, 1937.

Leon R. Yankwich

District Judge

The Premium Charged for
this Bond is \$10.00

[Endorsed]: Filed R. S. Zimmerman, Clerk at 42 min.
past 3 o'clock Aug. 2, 1937 P. M. By R. B. Clifton,
Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

STIPULATION FOR CONTENTS OF RECORD

Appellant and Appellee, through their respective counsel, hereby stipulate that the Record in the above entitled matter shall contain the following documents:

1. The claim filed by C. S. Hutson
2. Objections to said claim filed by Trustee
3. Order on claim
4. Petition for Review
5. Referee's Certificate on Review
6. Order of District Judge
7. Petition for Rehearing
8. Order of District Judge
9. A Statement of Evidence
10. Stipulation concerning testimony taken of H. L. Hutson at ancillary proceedings in San Francisco
11. This Stipulation
12. Stipulation Re Exhibits

Dated this 13 day of April, 1938.

Gerald Willis Myers
Attorney for Trustee

Robert B. Powell
Attorney for C. S. Hutson.

[Endorsed]: Filed Apr 13, 1938 at 55 min. past 4 o'clock P. M. R. S. Zimmerman, Clerk, By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE

To the Clerk of Said Court:

Sir:

Please print 40 copies of trans. of record on appeal.

Robert B. Powell
Atty. for C. S. Hutson, Appellant

[Endorsed]: Filed R. S. Zimmerman, Clerk at 55 min.
past 4 o'clock Apr. 13, 1938 P. M. By M. J. Sommer
Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 65 pages, numbered from 1 to 65, inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; claim filed by C. S. Hutson; notice of objection to allowance of claim; order disallowing claim; petition for review; referee's certificate on review; order of June 24, 1937; petition for rehearing; order of July 6, 1937; stipulation; statement of evidence; stipulation re exhibits; petition for appeal and order allowing appeal; assignment of errors; bond on appeal and stipulation for contents of record with praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this day of April, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight and of our Independence the One Hundred and Sixty-second.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.

